

AMENDED IN SENATE MAY 13, 2015

AMENDED IN SENATE APRIL 15, 2015

SENATE BILL

No. 738

Introduced by Senator Huff
(Coauthor: Senator Anderson)

February 27, 2015

An act to amend Section 49414 of the Education Code, relating to pupil health.

LEGISLATIVE COUNSEL'S DIGEST

SB 738, as amended, Huff. Pupil health: epinephrine auto-injectors: liability limitation.

Existing law requires school districts, county offices of education, and charter schools to provide emergency epinephrine auto-injectors to school nurses and trained personnel who have volunteered, as specified, and authorizes school nurses and trained personnel to use epinephrine auto-injectors to provide emergency medical aid to persons suffering, or reasonably believed to be suffering, from an anaphylactic reaction. Existing law requires a qualified supervisor of health or administrator at a school district, county office of education, or charter school to obtain the prescription for epinephrine auto-injectors from an authorizing physician and surgeon, as defined, and authorizes the prescription to be filled by local or mail order pharmacies or epinephrine auto-injector manufacturers.

This bill would prohibit an authorizing physician and surgeon from being subject to professional review, being liable in a civil action, or being subject to criminal prosecution for the issuance of a prescription or order, pursuant to these provisions, unless the physician and surgeon's issuance *of the prescription or order* constitutes gross negligence or

willful or malicious conduct. *The bill would also update an entity reference.*

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 49414 of the Education Code is amended
2 to read:

3 49414. (a) School districts, county offices of education, and
4 charter schools shall provide emergency epinephrine auto-injectors
5 to school nurses or trained personnel who have volunteered
6 pursuant to subdivision (d), and school nurses or trained personnel
7 may use epinephrine auto-injectors to provide emergency medical
8 aid to persons suffering, or reasonably believed to be suffering,
9 from an anaphylactic reaction.

10 (b) For purposes of this section, the following terms have the
11 following meanings:

12 (1) “Anaphylaxis” means a potentially life-threatening
13 hypersensitivity to a substance.

14 (A) Symptoms of anaphylaxis may include shortness of breath,
15 wheezing, difficulty breathing, difficulty talking or swallowing,
16 hives, itching, swelling, shock, or asthma.

17 (B) Causes of anaphylaxis may include, but are not limited to,
18 an insect sting, food allergy, drug reaction, and exercise.

19 (2) “Authorizing physician and surgeon” may include, but is
20 not limited to, a physician and surgeon employed by, or contracting
21 with, a local educational agency, a medical director of the local
22 health department, or a local emergency medical services director.

23 (3) “Epinephrine auto-injector” means a disposable drug delivery
24 system with a spring-activated needle that is designed for
25 emergency administration of epinephrine to provide rapid,
26 convenient first aid for persons suffering a potentially fatal reaction
27 to anaphylaxis.

28 (4) “Qualified supervisor of health” may include, but is not
29 limited to, a school nurse.

30 (5) “Volunteer” or “trained personnel” means an employee who
31 has volunteered to administer epinephrine auto-injectors to a person
32 if the person is suffering, or reasonably believed to be suffering,

1 from anaphylaxis, has been designated by a school, and has
2 received training pursuant to subdivision (d).

3 (c) Each private elementary and secondary school in the state
4 may voluntarily determine whether or not to make emergency
5 epinephrine auto-injectors and trained personnel available at its
6 school. In making this determination, a school shall evaluate the
7 emergency medical response time to the school and determine
8 whether initiating emergency medical services is an acceptable
9 alternative to epinephrine auto-injectors and trained personnel. A
10 private elementary or secondary school choosing to exercise the
11 authority provided under this subdivision shall not receive state
12 funds specifically for purposes of this subdivision.

13 (d) Each public and private elementary and secondary school
14 in the state may designate one or more volunteers to receive initial
15 and annual refresher training, based on the standards developed
16 pursuant to subdivision (e), regarding the storage and emergency
17 use of an epinephrine auto-injector from the school nurse or other
18 qualified person designated by an authorizing physician and
19 surgeon.

20 (e) (1) Every five years, or sooner as deemed necessary by the
21 Superintendent, the Superintendent shall review minimum
22 standards of training for the administration of epinephrine
23 auto-injectors that satisfy the requirements of paragraph (2). For
24 purposes of this subdivision, the Superintendent shall consult with
25 organizations and providers with expertise in administering
26 epinephrine auto-injectors and administering medication in a school
27 environment, including, but not limited to, the State Department
28 of Public Health, the Emergency Medical Services Authority, the
29 American Academy of Allergy, Asthma and Immunology, the
30 California School Nurses Organization, the California Medical
31 Association, the American Academy of Pediatrics, Food Allergy
32 Research and Education, the California Society of Allergy, Asthma
33 and Immunology, the American College of Allergy, Asthma and
34 Immunology, the ~~Stanford Allergy Center~~, *Sean N. Parker Center*
35 *for Allergy Research*, and others.

36 (2) Training established pursuant to this subdivision shall include
37 all of the following:

38 (A) Techniques for recognizing symptoms of anaphylaxis.

39 (B) Standards and procedures for the storage, restocking, and
40 emergency use of epinephrine auto-injectors.

1 (C) Emergency followup procedures, including calling the
2 emergency 911 telephone number and contacting, if possible, the
3 pupil's parent and physician.

4 (D) Recommendations on the necessity of instruction and
5 certification in cardiopulmonary resuscitation.

6 (E) Instruction on how to determine whether to use an adult
7 epinephrine auto-injector or a junior epinephrine auto-injector,
8 which shall include consideration of a pupil's grade level or age
9 as a guideline of equivalency for the appropriate pupil weight
10 determination.

11 (F) Written materials covering the information required under
12 this subdivision.

13 (3) Training established pursuant to this subdivision shall be
14 consistent with the most recent Voluntary Guidelines for Managing
15 Food Allergies In Schools and Early Care and Education Programs
16 published by the federal Centers for Disease Control and
17 Prevention and the most recent guidelines for medication
18 administration issued by the department.

19 (4) A school shall retain for reference the written materials
20 prepared under subparagraph (F) of paragraph (2).

21 (f) A school district, county office of education, or charter school
22 shall distribute a notice at least once per school year to all staff
23 that contains the following information:

24 (1) A description of the volunteer request stating that the request
25 is for volunteers to be trained to administer an epinephrine
26 auto-injector to a person if the person is suffering, or reasonably
27 believed to be suffering, from anaphylaxis, as specified in
28 subdivision (b).

29 (2) A description of the training that the volunteer will receive
30 pursuant to subdivision (d).

31 (g) (1) A qualified supervisor of health at a school district,
32 county office of education, or charter school shall obtain from an
33 authorizing physician and surgeon a prescription for each school
34 for epinephrine auto-injectors that, at a minimum, includes, for
35 elementary schools, one regular epinephrine auto-injector and one
36 junior epinephrine auto-injector, and for junior high schools, middle
37 schools, and high schools, if there are no pupils who require a
38 junior epinephrine auto-injector, one regular epinephrine
39 auto-injector. A qualified supervisor of health at a school district,
40 county office of education, or charter school shall be responsible

1 for stocking the epinephrine auto-injector and restocking it if it is
2 used.

3 (2) If a school district, county office of education, or charter
4 school does not have a qualified supervisor of health, an
5 administrator at the school district, county office of education, or
6 charter school shall carry out the duties specified in paragraph (1).

7 (3) A prescription pursuant to this subdivision may be filled by
8 local or mail order pharmacies or epinephrine auto-injector
9 manufacturers.

10 (4) An authorizing physician and surgeon shall not be subject
11 to professional review, be liable in a civil action, or be subject to
12 criminal prosecution for the issuance of a prescription or order
13 pursuant to this section, unless the physician and surgeon's issuance
14 *of the prescription or order* constitutes gross negligence or willful
15 or malicious conduct.

16 (h) A school nurse or, if the school does not have a school nurse
17 or the school nurse is not onsite or available, a volunteer may
18 administer an epinephrine auto-injector to a person exhibiting
19 potentially life-threatening symptoms of anaphylaxis at school or
20 a school activity when a physician is not immediately available.
21 If the epinephrine auto-injector is used it shall be restocked as soon
22 as reasonably possible, but no later than two weeks after it is used.
23 Epinephrine auto-injectors shall be restocked before their expiration
24 date.

25 (i) A volunteer shall initiate emergency medical services or
26 other appropriate medical followup in accordance with the training
27 materials retained pursuant to paragraph (4) of subdivision (e).

28 (j) A school district, county office of education, or charter school
29 shall ensure that each employee who volunteers under this section
30 will be provided defense and indemnification by the school district,
31 county office of education, or charter school for any and all civil
32 liability, in accordance with, but not limited to, that provided in
33 Division 3.6 (commencing with Section 810) of Title 1 of the
34 Government Code. This information shall be reduced to writing,
35 provided to the volunteer, and retained in the volunteer's personnel
36 file.

37 (k) A state agency, the department, or a public school may
38 accept gifts, grants, and donations from any source for the support
39 of the public school carrying out the provisions of this section,

- 1 including, but not limited to, the acceptance of epinephrine
- 2 auto-injectors from a manufacturer or wholesaler.

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